UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 15 2002

OFFICE OF
PREVENTION, PESTICIDES, AND
TOXIC SUBSTANCES

Douglas H. Green
Piper Rudnick
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412

Dear Mr. Green:

Thank you for your letter of April 11, 2002, and for the discussion with you and your clients at our meeting on April 3 concerning the ban on the distribution in commerce of polychlorinated biphenyls (PCBs) found in section 6(e) of the Toxic Substances Control Act (TSCA). My apologies for the delay in responding but we wanted to have some further discussions about the important issues that you raise.

As you know, releases of PCBs into the environment are of great concern to EPA, and the PCB program is designed to first prevent releases from various sources and then second, to address spills or other releases as quickly and thoroughly as possible. The statutory ban on the distribution in commerce of PCBs is one tool EPA uses to address illegal disposal and get people to clean up spills of PCBs. While we appreciate the points that you have raised during our discussion and in your letter, at the present time, EPA must continue to administer the program as it currently exists. To help clarify our position on this, I am enclosing a description of the Agency's general implementation of the ban on distribution in commerce of PCBs, which also addresses two scenarios you raised specifically with regard to pipelines and spills to porous surfaces.

I hope this letter clarifies the application of the PCB regulations to TSCA's ban on distribution in commerce of PCBs which were disposed of under the various scenarios discussed, and the use authorization for spills to porous surfaces. Again, we appreciate the issues and concerns that you raise and we will be having further discussions on these and other related issues over the coming months.

Sincerely yours,

Susan B. Hazen
Deputy Assistant Administrator

Enclosure

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There are several scenarios that illustrate EPA's implementation of the statutory ban on distribution in commerce of PCBs under the current regulations. In the first scenario, PCBs disposed of prior to the effective date of the regulations are considered by the regulations to be disposed of in a manner that does not pose an unreasonable risk of injury to health or the environment unless EPA determines otherwise (40 CFR 761.50(b)(3)(iii)(A)). The subsequent distribution in commerce of the spilled PCBs is then authorized by the regulations as distribution in commerce for disposal, or in this instance, continued disposal (40 CFR 761.20(c)(2)). In the next scenario, PCBs disposed of at concentrations below their authorized control level (i.e., usually, but not always, 50 ppm), are considered by the regulations to be disposed of in compliance with the regulations (40 CFR 761.50(b)(3)(i)); therefore, the subsequent distribution in commerce is also authorized by the regulations as distribution in commerce for disposal or in this instance, continued disposal (40 CFR 761.20(c)(2)).

In the last scenario, PCBs at concentrations regulated for disposal that are disposed of after the effective date of the disposal regulations are only authorized for distribution in commerce for legal disposal (40 CFR 761.20(c)(2)). If PCBs are spilled or otherwise released after the effective date of the disposal regulations, the PCBs may be distributed in commerce only in compliance with the applicable disposal provisions of the PCB regulations. A spill of regulated PCBs to soil, or a concrete floor, is not authorized for subsequent distribution in commerce except for purposes of disposal in compliance with the PCB regulations. If your company had a release from a PCB Transformer to soil or the floor of a building in 1998 the release would not have been in compliance with the PCB disposal regulations so, the only subsequent distribution in commerce authorized for those PCBs is for proper, authorized disposal. The company may cleanup or remediate and redispose of the PCBs in accordance with the PCB regulations (40 CFR 761.61). The company may also distribute in commerce (including the sale of the PCBs to another party) for subsequent disposal if the other party is an authorized disposer or formally agrees to take on that burden. Thus, the regulations focus the statutory ban on situations where PCBs were not disposed of properly but still allow distribution in commerce of those wastes to facilitate cleanup and proper disposal.

The pipeline scenario is somewhat unique because PCBs historically used in pipeline compressors as lubricants were released into those pipelines and distributed throughout the interconnected systems. The pipeline industry operated under a rigorous compliance agreement from 1981 until 1998, when EPA published regulations addressing the continued presence of PCBs in pipelines as part of the PCB Disposal Amendments (40 CFR 761.30(i)). Specifically, the new regulations function in the manner of a spill cleanup policy for PCBs in pipelines. The rules specify characterization of the contamination, removal or control (e.g., decontamination) of the source(s) of the contamination, proper disposal of any PCBs removed from the pipeline and confirmatory sampling. Meeting the PCB spill cleanup requirements contained in the rule authorizes continued use of the systems; because the gas and the pipes in the systems have been essentially decontaminated in accordance with an EPA policy (i.e., the regulation), distribution in commerce of the gas and the systems is also authorized (40 CFR 761.20(c)(5)). If a pipeline owner or operator subsequently discovers additional PCB contamination in their system, the rules prescribe the steps to be taken to bring the system back into conformance with the use authorization requirements so that gas can again be distributed safely to the end users.

The scenario where PCBs were not disposed of properly on a porous surface (i.e., the contaminated building situation) is also unique in that the use authorization at 40 CFR 761.30(p) was promulgated solely in response to comments of undue economic hardship from building owners. Unlike the gas pipeline use authorization regulation, the porous surfaces rule was not supported by data about the risks posed from spills or the effectiveness of the controls EPA imposed. In response to your assumption, EPA made no determination that it was "safe for indefinite use;" only that it would be economically burdensome to make the current owner discontinue use of the floor or building, and cleanup the spilled PCBs before use could resume. Once the owner of that floor or building is no longer using it for its original purpose, the economic hardship argument which supports the use authorization is no longer valid, and the spilled PCBs need to be cleaned-up.